

July 20, 2018

Region 2 FOIA Services Center
740 Simms Street
Golden, Colorado 80401
r2_ro_e-foia@fs.fed.us

RE: Freedom of Information Act Request for *all agency records* regarding the proposed Village at Wolf Creek Access Project, the July 19, 2018 Draft Record of Decision, and anything else relating to this project or the agency action including internal and external communications, consultation with the U.S. Fish and Wildlife Service, contact with other agencies, contact with Leavell-McCombs Joint Venture and communications with any other entity.

Dear Region 2 FOIA Services Center:

Under the Freedom of Information Act, 5 U.S.C. § 552, Rocky Mountain Wild (“RMW”), San Luis Valley Ecosystem Council (“SLVEC”), and San Juan Citizens Alliance (“SJCA”) request copies of all agency records of the U.S. Forest Service (“FS”) related to the proposed Village at Wolf Creek Access Project.

In particular this request seeks any and all records regarding:

- The July 19, 2018 Draft Record of Decision
- Canada lynx or any other listed or proposed species;
- Any consultation regarding this project;
- The proposed ANILCA access or other access alternatives;
- Any other records, communications with any entity, and information in any form regarding Wolf Creek pass, Access to LMJV’s private parcel, or anything considered directly or indirectly by the agency specialists or Interdisciplinary Team topic.

The reference to any entity includes Leavell-McCombs Joint Venture, state or federal agencies, elected officials, members of the public or any other unlisted party. Entities also includes any and all employees, *contractors*, partners, subsidiaries, parent corporations, board members, officers, managers, attorneys, agents, and any other person acting on the entity’s behalf. These entities include contractors that maintain documents the agency has accessed, or otherwise been advised of their contents. Responsive records may be maintained in various levels of the FS’s organizational structure, including the Local Offices, State and Regional Offices, Office of General Counsel, and Washington D.C. Offices of the Forest Service and the United States Department of Agriculture.. When responding, please designate one point of agency contact so this FOIA can be fulfilled in a timely manner. Communications may include emails, letters, consultations, comments, meeting notes, phone call notes, or any record of such communications. Please expeditiously provide a response date that records can be expected.

This FOIA request seeks information and documents beginning at the cut-off date used during searches related to RMW, SLVEC, and SJCA's November 20, 2014 FOIA request (tracking number 2015-FS-R2-00765-F) and the ending cut-off date that corresponds with each date of search. Should there be a delay between the initial search and production date, please use an ending search cut-off within 10 days of the production.

As Staff Attorney for RMW, I am filing this request on behalf of RMW, SLVEC, SJCA and its members, partner organizations, and citizens in the region to understand how the FS justifies its proposed action. Feedback from external agencies and entities will help us to determine the true impacts of this proposed action and the connected development. This information will assist our organizations, our members, and the general public to better understand the issues prior to the Objection deadline and a final Record of Decision. As organizations focused on protecting Wolf Creek Pass it is important for us to fully understand the impacts of this this proposed action.

Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and their daily relationship regarding private or commercial interest.

If you determine that portions of any records covered by this request are exempt from disclosure, please separate the exempt portions from the nonexempt portions and provide us with copies of the nonexempt portions. For any records that you determine to be exempt from release, please provide us with a specific description of the record or portion of the record along with a particularized description of the legal basis for withholding it. See *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

The information requested concerns the operation and activities carried out by the FWS to benefit private development interests. FOIA provides that agency records shall be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a) (4) (A) (iii).

Release of the records described in this request will primarily benefit the public and substantially contribute to its understanding of the government's policies and activities concerning management of public lands, wildlife habitat, endangered species protections, as well as policies concerning climate change and environmental protection. Rocky Mountain Wild makes information concerning the Wolf Creek Access Project and endangered species protections on public lands available to its members and members of the public through its website, publications, public meetings, electronic and printed action alerts, press releases, phone calls, administrative appeals, and litigation, among other means. Through public comment, preparation of action alerts, press releases, public meetings, or other means, Rocky Mountain Wild will make the information obtained from this request available to its supporters and other groups.

If you deny all or any part of this request, please cite each specific exemption you think justifies your withholding of information. Notify me of appeal procedures available under the law.

The requesting parties' request information be provided in OCR searchable PDF Format.

Pursuant to 5 U.S.C. §552(a)(4)(A)(iii), RMW, SLVEC, and SJCA are requesting a fee waiver for the records it is requesting. Rocky Mountain Wild are non-profit membership organizations incorporated in the State of Colorado. Rocky Mountain Wild advocates for the protection of wildlife, endangered species, water, and the public land in Colorado. RMW, SLVEC, and SJCA and its supporters have a long standing interest in the protection of Wolf Creek Pass and have been engaged in administrative processes involving this development for decades.

This fee waiver provision was adopted to facilitate access to agency records by citizen "watchdog" organizations such as Rocky Mountain Wild. *See, Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987). For this reason, Congress intended that the provision be liberally construed in favor of waivers for noncommercial requesters. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

If, for some reason, you should deny this request for a fee waiver, you should classify our organizations as a representative of the news media, as that term is used in 5 USC § 552 (a)(4)(A)(ii)(II). Rocky Mountain Wild serve as an information clearinghouses for individuals, media outlets, and organizations seeking information on public land policies as they impact Colorado and sensitive species. Information will be distributed through periodic bulletins, our web site, press events, slide shows and tabling at fairs and other public events. Therefore, our organizations are representatives of the news media. *See, National Security Archives v. US Department of Defense*, 880 F.2d 1381, 1385 (D.C. Cir. 1989).

This request is submitted with the full expectation that such a waiver will be granted. However, if a decision is made to deny the fee waiver request that has regularly been provided to our organizations, please immediately inform the undersigned of the cost of disclosing the above-described records if fees exceed \$50.00 and we can discuss appropriate next steps. Requesters are also happy to receive the requested records electronically to matt@rockymountainwild.org.

If you have any questions about handling this request, you may contact me by phone at (303) 579-5162 or by email at matt@rockymountainwild.org.

Sincerely,



Matthew Sandler
Staff Attorney
1536 Wynkoop St.
Ste. 900
Denver, CO 80202